

REMARKS/ARGUMENTS

Applicant acknowledges receipt of the Office Action dated November 8, 2010. Claims 1, 3-8, and 10-22 are pending in this application. Claims 1, 3-8, and 10-21 are rejected under 35 U.S.C. §103 as being unpatentable over Engel, U.S. Patent No. 2,911,291 ("*Engel*"). Claims 21 and 22 are rejected under 35 U.S.C. §103 as being unpatentable over Pawliszyn, U.S. Patent No. 5,496,741 ("*Pawliszyn*"). Applicant believes the pending claims are allowable over the art of record and respectfully requests reconsideration and allowance of all claims.

I. Claims 1, 3-8, and 10-21 are patentable over *Engel*.

Applicant respectfully traverses the Examiner's rejection of claims 1, 3-8, and 10-21 under §103 as being unpatentable over *Engel*. Applicant submits that the Examiner has not made a prima facie case of obviousness in rejecting such claims.

Claim 1 is an independent claim upon which claims 3-8 and 10-20 depend. Claim 21 is an independent claim. Claim 1 recites that the "probe includes an elongate cylinder portion which is arranged to rotate about a longitudinal axis of the elongate cylinder portion and to move longitudinally to enable the cylinder to be immersed in the sample." Claim 21 recites "wherein the elongate cylinder portion is arranged to rotate about a longitudinal axis of the elongate cylinder portion and to move longitudinally within the sheath with a portion of the elongate cylinder portion moveable out of the sheath to enable the elongate cylinder portion to be immersed in the sample." Claims 1 and 21 both recite an elongate cylinder portion "having thereon one or more vanes extending away from the cylinder portion."

Nothing in *Engel* teaches or suggests such recitations of claims 1 and 21. For instance, it is clear that *Engel* does not teach or suggest an elongate cylinder portion that is arranged to rotate about a longitudinal axis and to move longitudinally, as required of the "probe assembly for use" of claims 1 and 21. When the apparatus of *Engel* is assembled for use, the hollow shaft 13 is

longitudinally fixed. For instance, *Engel* specifically teaches that the hollow shaft . . . rigidly supports the turbine 30, heating elements 33, the catalytic reacting type filter element 48, and filtering elements 58, 66, 74, and 85, as well as deflectors 54 and 90, pulley 25 and the rotative fluid carrying tube 92.” (*Engel*, col. 2, lns. 38-43, emphasis added) Because the hollow shaft of *Engel* is required to rigidly support all of such elements, Applicant respectfully sets forth that the assembled apparatus of *Engel* clearly cannot move longitudinally as required by independent claims 1 and 21.

The Examiner sets forth in the Office Action that “it would appear that the shaft is arranged for some degree of longitudinal movement for this mounting.” (Office Action, pg. 2, para. 2) Applicant would like to respectfully point out that the Examiner is referring to assembly of the apparatus of *Engel*, not for an assembled probe assembly for use. Applicant would also like to respectfully point out that vanes 67 of *Engel* are clearly not longitudinally moveable during assembly. Claims 1 and 21 each require an elongate cylinder portion having thereon one or more vanes extending away from the cylinder portion and an elongate cylinder portion that is arranged to rotate about a longitudinal axis and to move longitudinally. *Engel* also clearly does not teach or suggest such recitations.

In view of the recitations in independent claims 1 and 21 that are neither taught nor suggested by *Engel*, the Applicant respectfully submits that independent claims 1 and 21 are allowable over *Engel*. Applicant therefore requests that the Examiner withdraw the §103 rejections of dependent claims 3-8 and 10-20, since it is submitted that independent claim 1 is allowable. Dependent claims 3-8 and 10-20 must be allowable, since they carry all the limitations of the allowable independent claim 1 to which they refer.

II. Claims 21 and 22 are patentable over *Pawliszyn*.

Applicant respectfully traverses the Examiner's rejection of claims 21 and 22 under §103 as being unpatentable over *Pawliszyn*. Applicant submits that the Examiner has not made a prima facie case of obviousness in rejecting such claims.

Claims 21 and 22 are independent claims. Claims 21 and 22 each recite "wherein the elongate cylinder portion is arranged to rotate about a longitudinal axis of the elongate cylinder portion and to move longitudinally." Nothing in *Pawliszyn* teaches or suggests such recitations of claims 21 and 22. For instance, in regards to Fig. 1, *Pawliszyn* teaches "[a]n agitator 20 is suitably connected to rotate about its longitudinal axis to stir the sample." (*Pawliszyn*, col. 2, lns. 25-27) Agitator 20 clearly does not move longitudinally. In addition, in regards to Fig. 2, *Pawliszyn* teaches "[t]he fiber 20 can be moved longitudinally relative to the housing 22 by using a plunger 27." (*Pawliszyn*, col. 2, lns. 34-36) Nothing in *Pawliszyn* teaches or suggests rotational movement of fiber 20. Therefore, nothing in *Pawliszyn* teaches or suggests an elongate cylinder portion that is arranged to rotate and move longitudinally, as required by claims 21 and 22.

In view of the recitations in independent claims 21 and 22 that are neither taught nor suggested by *Pawliszyn*, the Applicant respectfully submits that independent claims 21 and 22 are allowable over *Pawliszyn*.

III. Conclusion

Applicant respectfully requests reconsideration, allowance of the pending claims and a timely Notice of Allowance be issued in this case. If the Examiner feels that a telephone conference would expedite the resolution of this case, the Examiner is respectfully requested to contact the undersigned.

In the course of the foregoing discussions, Applicant may have at times referred to claim limitations in shorthand fashion or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art that have yet to be raised but which may be raised in the future.

Respectfully submitted,

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